IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6978 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAIKH DAUD MEHBOOB BASHA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6978 of 1988

MR AG VYAS for Petitioner No. 1-10

MR IS SUPEHIA for Petitioner No. 1,4-3,5-3,7-6,8-6,9-6

MR DJ CHAUHAN for Petitioner No. 1-3,4-3,5-6,7-6,8-6,9-10

MR ND GOHIL ASST GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 26/10/2004

ORAL JUDGEMENT

In the present petition, the petitioners have challenged the order dated 8.8.1988 in so far as the same

orders recovery of salary paid to the petitioners for having performed duties during leave period for the period from 1.1.1986 to July, 1988.

2. The petitioners contend that the petitioners had performed their duties during public holidays and had also surrendered 20 days casual leave for period between 1.1.1986 to July, 1988. For having worked during said period, the petitioners were also paid salary in addition to their regular monthly salaries for having surrendered their leave. It is case of the petitioners that the respondent No.1 by Resolution dated 4.6.1988 upgraded the posts of Head Wireless Operators / Radio Mechanic [the posts which the petitioners held] and redesignated the same as posts of Police Wireless Sub Inspectors. Pursuant to the said resolution dated 4.8.1988, therefore, all the petitioners were entitled to receive higher pay scale of Rs.1640-2900/-. By resolution dated 8.8.1988, however, it was directed that since the upgradation of the posts in question is made effective with effect from 1.1.1986, the salary paid to the petitioners for having worked on the holidays should be recovered from 1.1.1986.

3. It is not in dispute that the petitioners had worked during holidays and had also surrendered their casual leaves for which they were paid additional salary for the extra work done by them. If this be the position, the respondents could not have recovered the extra payments made since the petitioners had actually worked during said period. Even if the post of Head Wireless Operator / Radio Mechanic was upgraded with effect from 1.1.1986 and placed in higher pay scale of Rs.1640-2900/-, that by itself would not justify or permit the respondents to recover salary paid to the petitioners for having actually worked on holidays and on days when the petitioners would be enjoying the casual leaves. On one hand the petitioners had surrendered the holidays and casual leaves which the petitioners could have accumulated for leave encashment in future and on the other hand the salary paid to them, is sought to be recovered only on the ground that the posts on which the petitioners were placed is now placed on higher pay scale with effect from 1.1.1986.

4. I find no relation between two events and if the petitioners had actually discharged their duties during the holidays and paid salary for the same, such payments made by the respondents could not have been recovered from the petitioners. It may be noted that the respondents have not filed any affidavit opposing the

petition.

5. In the result, the petition is allowed. The impugned order [Annexure-A] dated 8.8.1988 is quashed and set aside. The recovery if any made from the emoluments of the petitioners pursuant to the order dated 8.8.1988, shall be refunded to the petitioners.

Rule made absolute accordingly. No order as to costs.

Date : 26.10.2004 [Akil Kureshi, J.]

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